

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)**

JUDY JIEN, *et al.*,

Plaintiffs,

v.

PERDUE FARMS, INC., *et al.*,

Defendants.

Civil Action No.: 1:19-cv-2521-SAG

**MEMORANDUM IN SUPPORT OF CERTAIN DEFENDANTS’
MOTION TO DISMISS PLAINTIFFS’ CONSOLIDATED COMPLAINT**

Plaintiffs plead no specific facts that plausibly suggest that any of the undersigned Defendants (“Movants”), comprising twelve separate corporate families, joined in the purported conspiracies alleged in Plaintiffs’ Consolidated Complaint (“Complaint”). For one group of Movants, Plaintiffs fail to make any specific allegations beyond the section in the Complaint identifying them as parties. For the rest, Plaintiffs’ allegations are negligible and non-substantive. Plaintiffs cannot cure these fatal deficiencies by relying on group allegations against unspecified “Defendants,” “Defendant Processors,” or “Defendants’ senior executives.” Rather, a Section 1 complaint must “allege particular facts against a particular defendant.” *SD3, LLC v. Black & Decker (U.S.) Inc.*, 801 F.3d 412, 422 (4th Cir. 2015). If it does not, as here, “then the defendant must be dismissed.” *Id.* For this reason, Plaintiffs’ Complaint should be dismissed as to Movants.

SUMMARY OF ALLEGATIONS AGAINST MOVANTS

I. Some Movants Are Mentioned Only in the “Parties” Section of the Complaint.

For Defendants from six corporate families and three Defendants affiliated with other corporate families,¹ the Complaint’s single individual reference to them is in the “Parties” section, where Plaintiffs identify each by state of incorporation, place of business, and corporate structure and allege that each employed and paid wages to Class Members. (Compl. ¶¶41-52, 57-58, 61-63, 70-80.) That is the full extent of the specific allegations as to these Defendants.

II. Plaintiffs Allege Virtually Nothing More as to the Other Movants.

For the remaining ten Movants,² Plaintiffs make similar allegations in the “Parties” section of the Complaint. (*Id.* ¶¶56-58, 60, 62, 64-69, 81-85.) Plaintiffs also allege, in the “Jurisdiction and Venue” section, that Mountaire Farms, Inc. and Case Foods, Inc. have employees, and Amick Farms, LLC and Allen Harim Foods, LLC have employees and plants, in Maryland. (*Id.* ¶13.) George’s, Inc. and Simmons Foods, Inc. are alleged to have employed one or more of the three named Plaintiffs at unspecified times. (*Id.* ¶¶15-17.) The only other factual allegations as to these Movants are that the owner of “Mountaire Farms” “regularly attend[s] church” with the chairman

¹ The six Defendant families mentioned only in the section of the Complaint defining the parties are: Fieldale Farms Corporation; Harrison Poultry, Inc.; the House of Raeford Farms defendants (House of Raeford Farms, Inc.; House of Raeford Farms of Louisiana, LLC); the Koch Food defendants (JCG Foods of Alabama, LLC; JCG Foods of Georgia, LLC; JCG Industries, Inc.; Koch Foods, Inc.; Koch Foods, LLC; Koch Foods of Alabama, LLC; Koch Foods of Ashland, LLC; Koch Foods of Gasden, LLC; Koch Foods of Cumming, LLC; Koch Foods of Gainesville, LLC; Koch Foods of Mississippi, LLC); the Mar-Jac Poultry defendants (Mar-Jac Poultry, Inc.; Mar-Jac Poultry MS, LLC; Mar-Jac Poultry AL, LLC; Mar-Jac Poultry, LLC; Mar-Jac Holdings, Inc.); Mountaire Farms of Delaware, Inc.; and O.K. Foods, Inc. Three additional corporate entities, Case Farms Processing, Inc., Mountaire Farms of Delaware, Inc., and Simmons Prepared Foods, Inc., also are mentioned only in the “Parties” section of the Complaint.

² The remaining ten Movants are: Allen Harim Foods, LLC; Amick Farms, LLC; Case Foods, Inc.; George’s, Inc.; George’s Chicken, LLC; George’s Foods, LLC; George’s Processing, Inc.; Ozark Mountain Poultry, Inc.; Mountaire Farms, Inc.; and Simmons Foods, Inc.

of Perdue (*id.* ¶179), and that “George’s” reviewed Agri Stats benchmarking data “to assess plant performance” (*id.* ¶157).³ Finally, the Complaint also alleges, in wholly conclusory fashion within the “Jurisdiction and Venue” section, that employees of Amick and Allen Harim were paid, at some unspecified time, “suppressed” wages “as a result of the conspiracy.” (*Id.* ¶13.)

LEGAL STANDARD

When a plaintiff brings claims under Section 1 of the Sherman Act, its complaint “must forecast” the “factual showing” it will be required to make at trial “that *each defendant* conspired in violation of the antitrust laws.” *SD3*, 801 F.3d at 422 (emphasis added). “In other words, the complaint must ‘specify how these defendants were involved in the alleged conspiracy.’” *Id.* (quoting *In re Travel Agent Comm’n Antitrust Litig.*, 583 F.3d 896, 905 (6th Cir. 2009)). To meet this pleading burden, a plaintiff must allege facts—not merely make conclusory assertions—as to each defendant. As the Supreme Court has made clear, a court is only to consider “well-pleaded factual allegations” in determining whether a plaintiff has stated a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *see also id.* (“[P]leadings that . . . are no more than conclusions[] are not entitled to the assumption of truth.”); *id.* at 678 (“‘labels and conclusions,’” “‘a formulaic recitation of the elements of a cause of action,’” and “‘naked assertion[s]’ devoid of ‘further factual enhancement’” are insufficient) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). And those facts must not be “merely consistent with a defendant’s liability,” because that “stops short of the line between possibility and plausibility,” which a plaintiff must cross to state a claim. *Iqbal*, 556 U.S. at 678 (quotations omitted).

³ Plaintiffs have included certain allegations regarding the hiring of employees by Case Farms LLC. (Compl. ¶¶122-123.) Those allegations are irrelevant to the present motion because Case Farms LLC is not a defendant. In any event, those allegations have no bearing on any alleged conspiracy to depress wages or share compensation information.

Not only must a plaintiff allege facts as to each defendant, it must do so “without relying on ‘indeterminate assertions’ against all ‘defendants.’” *SD3*, 801 F.3d at 422. “A plaintiff in a §1 case cannot assemble some collection of defendants and then make vague, non-specific allegations against all of them as a group.” *Id.* The Supreme Court has cautioned courts not “to forget that proceeding to antitrust discovery can be expensive,” noting courts “retain the power to insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed.” *Twombly*, 550 U.S. at 559 (quotation omitted); *see also In re Elevator Antitrust Litig.*, 502 F.3d 47, 50 n.4 (2d Cir. 2007) (same). If a complaint “fails to allege particular facts against a particular defendant, then the defendant must be dismissed.” *SD3*, 801 F.3d at 422.

ARGUMENT

Plaintiffs’ failure to plead specific allegations against each Movant fails to push from possible to plausible Plaintiffs’ claim that any of them joined an antitrust conspiracy. And their various group allegations cannot be used to fill the gap. Plaintiffs are required to do more to drag the Movants into costly litigation. Their Complaint must, therefore, be dismissed as to each of the Movants.

I. Plaintiffs Fail to Allege Any Facts that Plausibly Suggest Any Movant Joined a Purported Conspiracy.

A. Some Movants are mentioned only when Plaintiffs enumerate the “Parties.”

For six Defendant families and three additional Defendants (*see* n.1), the Complaint’s single individual reference to them is in the “Parties” section, where Plaintiffs merely identify each and make the allegation that they employed and paid wages to Class Members. (Compl. ¶¶41-52, 57-58, 61-63, 70-80.) That is it.

Plaintiffs do not plead any specific facts as to these Movants suggesting that they knew about, joined, or otherwise acted in furtherance of the alleged conspiracies. Plaintiffs do not even

make the conclusory allegation that each of these individual Movants joined the alleged conspiracies. Thus, as to these Movants, there is nothing for the Court to analyze except group allegations against unspecified “Defendants,” which are plainly insufficient on their own to state a claim. In *SD3*, for example, the Fourth Circuit affirmed the dismissal of several corporate parents and subsidiaries that had been named as defendants where “no factual allegations [were] made against them,” explaining that a plaintiff “obviously may not pursue an antitrust claim against a defendant who is not alleged to have done anything at all.” 801 F.3d at 423.

Similarly, in *In re Travel Agent Commission Antitrust Litigation*, the court affirmed dismissal of antitrust claims against two defendants where “neither is mentioned in the body of the Amended Complaint, nor do plaintiffs specify how these defendants are involved in the alleged conspiracy.” 583 F.3d at 905. Plaintiffs argued that their allegations referring to “defendants” or “defendants’ executives” were sufficient to implicate the two defendants in the conspiracy. *Id.* at 905-06. But the Sixth Circuit rejected that argument, finding “plaintiffs’ reliance on these indeterminate assertions [to be] misplaced because they represent precisely the type of naked conspiratorial allegations rejected by the Supreme Court in *Twombly*.” *Id.* For the same reason, the Court should dismiss the claims against those Movants that are mentioned only in the “Parties” section of the Complaint.

B. As to the other Movants, Plaintiffs’ additional allegations are also insufficient.

The Court also should dismiss the claims against the other Movants (*see* n.2). The additional allegations about their status as employers and the location of their facilities and employees (Compl. at ¶¶13-16) do nothing to support an inference that these Movants joined any conspiracy. Nor do the other inconsequential allegations save Plaintiffs’ claims.

Plaintiffs’ sole substantive allegation against “Mountaire Farms”—that its owner “regularly attend[s] church” with an executive from another chicken company (*id.* ¶179)—does not plausibly suggest participation in a conspiracy; indeed, the notion that the exercise of constitutionally-protected religious freedoms, by itself, justifies forcing the Mountaire Defendants to defend an antitrust suit is wrong on many levels. Further, the allegation that an unidentified person or persons at “George’s” reviewed Agri Stats’ benchmarking information “to assess plant performance”—the proper and procompetitive purpose of benchmarking—also does not suggest any illegality. And finally, Plaintiffs’ conclusory allegation that Amick Farms and Allen Harim paid suppressed compensation, at some unspecified time, as a result of the alleged conspiracy (*id.* ¶13), merely restates an element of Plaintiffs’ purported claim and cannot be credited on a motion to dismiss. *See Iqbal*, 556 U.S. at 679. None of these allegations make the Movants’ participation in any alleged conspiracy plausible, and Plaintiffs cannot ask the Court to “assume that plaintiffs can prove facts that they have not alleged or that defendants have violated the antitrust laws in ways that have not been alleged.” *Estate Const. Co. v. Miller & Smith Holding Co., Inc.*, 14 F.3d 213, 220-21 (4th Cir. 1994) (quotation omitted).

Plaintiffs simply do not plead facts describing any Movant’s alleged involvement in the alleged conspiracies, or even specifically allege that each or any of them joined (and if so how, when, where, and with whom). Plaintiffs do not even make any specific allegation that any Movant attended a meeting with, or otherwise communicated with, another Defendant,⁴ or that any Movant changed wages or other compensation in parallel with another Defendant. The

⁴ Even if Plaintiffs had made such allegations, “‘mere contacts and communications, or the mere opportunity to conspire, among antitrust defendants is insufficient evidence [of] an anticompetitive conspiracy.’” *Am. Chiropractic v. Trigon Healthcare*, 367 F.3d 212, 227 (4th Cir. 2004) (quoting *Cooper v. Forsyth County Hosp. Auth.*, 789 F.2d 278, 281 (4th Cir. 1986)); *see also* Mem. in Supp. of All Defs.’ Joint Mot. to Dismiss at 14-15.

Complaint's bare allegations "furnish[] no clue" as to any Movant's purported role in any "conspiracy," and thus would leave them with "little idea where to begin" when answering. *Twombly*, 550 U.S. at 565 n.10.

The lack of specific allegations against the Movants simplifies the Court's analysis of Movants' motion to dismiss. The scarce specific mentions of Movants do not move from possible to plausible any Movant's participation in the alleged conspiracies. Where, as here, plaintiffs do not make any substantive allegations against an individual defendant, courts do not hesitate to dismiss those defendants. *See SD3*, 801 F.3d at 423 (noting that "unadorned conclusory allegations . . . are akin to no allegations at all"); *In re Elevator Antitrust Litig.*, 502 F.3d 47, 50–51 (2d Cir. 2007) (holding a complaint's enumeration of "basically every type of conspiratorial activity that one could imagine . . . in entirely general terms without any specification of any particular activities by any particular defendant" is insufficient); *In re GSE Bonds Antitrust Litig.*, No. 19 CIV. 1704, 2019 WL 4071070, at *4 (S.D.N.Y. Aug. 29, 2019) (dismissing certain defendants because "there must be something in the complaint that ties each defendant to the conspiracy"); *In re Optical Disk Drive Antitrust Litig.*, No. 13 CIV. 4911, 2014 WL 3378336, at *4 (N.D. Cal. July 10, 2014) (dismissing a defendant because plaintiffs "must at least, include allegations specific to each defendant alleging that defendant's role in the alleged conspiracy" and "[t]he sparse and conclusory allegations . . . in the complaint do not presently meet that standard") (quotation omitted); *In re Parcel Tanker Shipping Servs. Antitrust Litig.*, 541 F. Supp. 2d 487, 491 (D. Conn. 2008) (dismissing claims where "the complaint alleges general conspiratorial activity without reference to specific actions by a particular defendant at a particular time"). Plaintiffs' claims against Movants should meet the same fate.

II. Plaintiffs Cannot Rely on Group Allegations Against “Defendants” to Satisfy Their Pleading Burden as to the Movants.

Plaintiffs’ claims against each Movant are not saved by their allegations as to unspecified “Defendants” or unnamed “senior executives of Defendants.” Courts—including the Fourth Circuit—have refused to allow antitrust plaintiffs to proceed against individual defendants on this basis. *See, e.g., SD3*, 801 F.3d at 422 (“A plaintiff in a § 1 case cannot assemble some collection of defendants and then make vague, non-specific allegations against all of them as a group.”); *In re Travel Agent Commission Antitrust Litig.*, 583 F.3d at 905-06 (rejecting plaintiffs’ reliance on allegations referring to “defendants” or “defendants’ executives” because “these indeterminate assertions . . . represent precisely the type of naked conspiratorial allegations rejected by the Supreme Court in *Twombly*”); *Akers v. Maryland State Educ. Ass’n*, 376 F. Supp. 3d 563, 573 (D. Md. 2019) (same); *In re Mexican Gov’t Bonds Antitrust Litig.*, No. 18 CIV. 2830, 2019 WL 4805854, at *7 (S.D.N.Y. Sept. 30, 2019) (dismissing a complaint that “contains almost no individualized allegations at all”); *In re Interest Rate Swaps Antitrust Litig.*, No. 16 MD 2704, 2018 WL 2332069, at *15 (S.D.N.Y. May 23, 2018) (allegations about the defendants “as a general collective bloc, or generalized claims of parallel conduct, must . . . be set aside . . . as impermissible group pleading”); *In re Zinc Antitrust Litig.*, 155 Supp. 3d 337, 384 (S.D.N.Y. 2016) (dismissing claims because plaintiffs had “resort[ed] to . . . group pleading”). Where, as here, a complaint “fails to allege particular facts against a particular defendant, then the defendant must be dismissed.” *SD3*, 801 F.3d at 422.

CONCLUSION

“Plaintiffs have done exactly what the Fourth Circuit proscribes: filed a shotgun pleading that relies upon indeterminate assertions against all defendants without any specific facts regarding any particular defendants.” *Panhandle Cleaning & Restoration, Inc. v. Nationwide Mut. Ins. Co.*,

No. 17 CIV. 117, 2018 WL 3717108 at *4–5 (N.D. W. Va. Aug. 3, 2018). Accordingly, in addition to the reasons for dismissing Plaintiffs’ Complaint set forth in All Defendants’ Joint Motion to Dismiss Plaintiffs’ Consolidated Complaint and its accompanying memorandum in support, the Court should dismiss Plaintiffs’ Complaint as to the Movants for failure to allege specific facts that suggest any Movant joined any antitrust conspiracy.

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CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2019, a true and correct copy of the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Terri S. Reiskin